UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

Paul H. Achitoff
Managing Attorney
Earthjustice Mid-Pacific Office
850 Richards Street, Suite 400
Honolulu, HI 96813

Dear Mr. Achitoff:

I'm responding to your letter of August 4, 2016 concerning the Hawaii Department of Agriculture's (HDOA) authority over pesticide use violations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We are concerned about HDOA's performance and are focusing our oversight to ensure HDOA addresses its case backlog and implements lasting changes to strengthen its enforcement program and overall implementation of FIFRA.

As part of our most recent End-of-Year Evaluation Report for the FY15 HDOA FIFRA Pesticide Performance Partnership Grant, we requested and HDOA provided an Action Plan, in which HDOA specifically set forth steps to eliminate its current case backlog and expedite its case development and enforcement process. See attached Action Plan dated May 5, 2016.

We are working to secure additional funding for HDOA to focus on reducing its immediate backlog of cases through an in-kind, EPA-managed service contract to track, analyze, and process cases. Although this is not a long-term solution, we believe it will give HDOA the capacity to address long-term structural changes to its program.

HDOA has increased pesticide use violation referrals to EPA. We are evaluating these referrals for enforcement and currently have several significant pending enforcement actions. We believe that this will help HDOA address some of the other significant cases in its case backlog and enhance HDOA's current enforcement efforts by EPA sending a compelling deterrent message to those who do not comply with pesticides use requirements in Hawaii.

As HDOA is committed to improving its enforcement program and is implementing an Action Plan to meet this goal, EPA is not revoking FIFRA primacy at this time. We will monitor HDOA's efforts closely through regular meetings and calls with HDOA to ensure measurable progress is made over the next year. Each quarter, we will evaluate HDOA's progress and determine if other actions are needed. We appreciate your detailed insights and comments regarding HDOA's enforcement program and are considering how to meaningfully engage the public

Printed on Recycled Paper

on this important issue. If you have any further questions or comments, please call me at (415) 972-3572 or Amy C. Miller of my staff at (415) 947-4198.

Sincerely yours,

Alexis Strauss 22 Aug. 2016
Acting Regional Administrator

Attachment
HDOA Action Plan, May 5, 2016

cc: Scott Enright, Hawaii Department of Agriculture

HAWAII DEPARTMENT OF AGRICULTURE – PESTICIDES BRANCH
ACTION PLAN: CASE DEVELOPMENT PROGRAM
May 5, 2016

ITEM:	PROBLEM AREAS IDENTIFIED:	SOLUTIONS:	HINDERANCES:	TIMELINE:
CASE FILE REVIEW – BACKLOG Backlog of over 700 cases; some since 2008. • (Ideally 1 month to close cases without CPs.) • Ideally no cases open for 6 months.	Insufficient resources to review cases and process/issue enforcement actions; W/N, NOV, CP's	• Increase no. of case developer positions from current 2 to 4 • Request 2 additional positions in next legislative session. • Use of 89 day hires. • Hired dedicated deputy attorney general. (Delanie Prescott-Tate)	• 89 day hires are temporary stop gap measure and utilize other positions nos. • Have to wait for next legislative session 2017	• In 2017 Legislature – submit request for additional 2 case developer positions. • 2- 89 day persons hired; Jan 2016 and May 2016 • Deputy AG hired 5/2016 • Ongoing - monitor progress in reducing backlog
	Case review process.	• Develop protocol to prioritize review of case jackets • Identify by inspection type and develop priority listing. • Develop tracking system	• Have to finalize priority listing of case type. I.e. High level episode, complaints with violations, WPS tier I, compliance verification, PEL.....	• During May 2016 training workshop, finalize. • Ongoing – monitor progress in reducing case review time
	Need additional "enforcement action tool".	• Consult with Nevada SLA for "enforcement ticket" (ET) template and protocol.	• HDOA will have to develop its own.	• May – June 2016; develop E.T. protocol by Deputy AG. • Need approval by State Judge to use. • July 2016; Training to staff. • Aug – Sept; incorporate use.
	Need clerical resources to process closed cases	• Use 89 day hire to assist with processing files	• 89 day hire are temporary stop gap measure and utilize other positions nos.	• In 2017 Legislature – submit request for clerical positions • Ongoing - monitor progress through legislature and personnel department.
	Numerous and sporadic requests for information via Uniform Information Practices Act (UIPA). Takes away time for Case Developer and others to perform routine work functions	• Hire 2 additional case developers • Use 89 day hire to assist with processing UIPA requests	• 89 day hire are temporary stop gap measure and utilize other positions nos.	In 2017 Legislature – submit request for 2 additional case developer positions.
	Awaiting lab analysis of environmental samples. Experience backlog of 10 months to run samples	• Purchase new lab equipment	• State procurement process lengthy	• Keep staff and program manager apprised of backlog time

ED_003057A_00006318-00003

HAWAII DEPARTMENT OF AGRICULTURE – PESTICIDES BRANCH
ACTION PLAN: CASE DEVELOPMENT PROGRAM
May 5, 2016

ITEM:	PROBLEM AREAS IDENTIFIED:	SOLUTIONS:	HINDERANCES:	TIMELINE:
CONTENT OF INSPECTION JACKETS	Inspector's narratives • may be too short • narrative may be vague at times when describing investigation or inspection • have to send back to inspector for correction or additional documents	• Ask Deputy AG and case developer to provide training and guidance to enforcement personnel on how to improve narrative writing. • Refer inspectors to re-read FIFRA Manual – section on report writing and proper documentation. • Ensure proper and continuous training takes place for all inspectors in regards to narratives and proper documentation in case files	• Frequency of training every 6 months. • More inspections to be added and more case jackets forwarded to case developer	• Send memo to enforcement staff prior to May 2016 training to re FIFRA and PEI section. • Ongoing - monitor progress
INCREASE NO. OF INSPECTORS	• Insufficient no. of inspectors state wide. • Need approval from state legislature to create positions. • Hiring process slow.	• Request of 2014 state legislature for more inspector positions. • No. of positions increased from 6 to 11. • More inspectors coming on board since Dec. 2015. • Ongoing recruitment to fill vacancies.	• Lengthy hiring process by State Dept. of Human Resources and HDOA personnel department. • Recent Oahu inspector resigned position after 3 weeks on job. • Length of training process ~ 2 years for new inspectors.	• Training provided at May 2016 and Nov. 2016 workshops. • Ongoing recruitment.
VACANT CASE DEVELOPER POSITION (Backfill vacant case developer position)	• 1 C.D. (Avis O.) recently retired end of Jan '16. • Tory, (2nd C.D.) is on T/A in this position. Have requested to fill Avis' position since Feb. and need to fill 1st, before Tory's position can be open for hire.	• Upper management determines ranking to fill positions.	• HDOA personnel department backlogged in hiring' 130 vacant positions. This position is currently not a high priority to fill.	• ~July – August 2016 • Monitor progress through personnel department

ED_003057A_00006318-00004

HAWAII DEPARTMENT OF AGRICULTURE – PESTICIDES BRANCH
ACTION PLAN: CHEMICAL ANALYSIS LABORATORY
May 5, 2016

ITEM:	PROBLEM AREAS IDENTIFIED:	SOLUTIONS:	HINDERANCES:	TIMELINE:
AWAITING ENVIRONMENTAL SAMPLES – BACKLOG • (ideally 2 – 3 week turn around)	• Old LC/MS had frequent break downs. • Staff shortage. • Some samples require running for 6 chemicals • Cross training of staff	• Defer to CAL and program manager for solution. • Replace old LC/MS equipment • Send out certain samples to CA Dept. of Food and Ag Laboratory until backlog has ended. • Send request to state legislature to establish technician position. • Provide cross training of staff to be able to run samples on either LC/MS or GC/MS. • Secure contract with CA Dept. of Food and Ag Lab for services. • Provide monthly status update to Program Manager on samples pending analysis.	• Re-started initial discussion with CA Dept. of Food and Ag Lab for chemistry analytical services. • Pursue costs and payment methods to run chemistry analysis by CA Dept. of Food and Ag Lab	• New LC/MS purchased and installed in Oct. 2015 • April 2016 - In discussion with CA Dept. of Food and Ag Laboratory on costs to conduct chemistry analytical services for HDOA – CAL • Ongoing. Monthly status update of environmental samples. • Wait until 2017 legislative session to submit lab technician position.

ED_003057A_00006318-00005